UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, and	
STATE OF OREGON,	
	Civil Action No.
Plaintiffs,	PLAINTIFFS' COMPLAINT FOR
v.	INJUNCTIVE AND OTHER RELIEF
TEXACO INC., a Delaware corporation;	UNDER THE SHERMAN AND
and SHELL OIL COMPANY, a Delaware	CLAYTON ACTS AND UNDER
corporation,	RCW 19.86 & ORS
et.seq.	
Defendants.	

I. JURISDICTION AND VENUE

1. This Complaint is filed and the jurisdiction and venue of the Court are invoked under the provisions of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18); Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; RCW 19.86.030, 19.86.040, and 19.86.060; and ORS 646.725, 646.730, 646.760, and 646.770.

2. The state Attorneys General have authority to bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, RCW 19.86.080 and ORS 646.760 and 646.770.

3. The violations alleged herein have been and are being committed in whole or in part in the Western District of Washington and the District of Oregon by the defendants named herein.

4. The violations alleged herein have a substantial effect on interstate commerce.

II. PLAINTIFFS

5. The Attorneys General of the States of Washington and Oregon are the chief law enforcement officers of the state and as such are empowered to bring this suit on behalf of the states and on behalf of their general economies and natural persons residing in the states.

III. DEFENDANT TEXACO INC.

6. Defendant Texaco Inc. ("Texaco") is a Delaware corporation with its principal place of business in White Plains, New York. Texaco is engaged in crude oil production and in the refining, distribution, marketing and retailing of petroleum products, including gasoline, in the States of Oregon and Washington and elsewhere. Texaco conducts business in the Western District of Washington and in the State of Oregon under its brand name, through its wholly owned subsidiary Texaco Refining and Marketing Inc. For purposes of this complaint, "Texaco" and "Texaco Refining and Marketing Inc." are referred to interchangeably.

IV. DEFENDANT SHELL OIL COMPANY

7. Defendant Shell Oil Company ("Shell") is a Delaware corporation with its principal place of business in Houston, Texas. Shell is engaged in crude oil production, and in the refining, distribution, marketing and retailing of petroleum products, including gasoline, in the States of Oregon and Washington and elsewhere. Shell conducts business in the Western District of Washington and in the State of Oregon under its brand name.

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V. SHELL/TEXACO JOINT VENTURE

8. On March 18, 1997, Shell and Texaco Refining and Marketing Inc. entered into an agreement to form a Joint Venture to combine all their assets in the western United States, with the exception of crude oil production. The Joint Venture agreement provides for the combination and common operation of refineries, pipelines, terminals and retail gasoline stations.

VI. DEFINITIONS

9. "Gasoline" means various grades of refined motor fuel products commonly sold at Retail Sites as fuel for motor vehicles.

10. "Person" means any individual, partnership, corporation, association, firm, or other legal entity.

11. "Refiner" means a person who makes gasoline from crude oil, unfinished oils, natural gas plant liquids, or other hydrocarbons.

12. "Retail Site" means a business establishment from which gasoline is sold to the general public, commonly known as a gasoline station.

13. "Retailer" means a person who sells gasoline to the general public at a Retail Site.

14. "Wholesaler", means a person who purchases gasoline from a refiner and sells it to a Retailer, bulk purchaser, another wholesaler or distributor, or to the general public at a Retail Site.

VII. TRADE AND COMMERCE

15. Gasoline is supplied to consumers through a series of transactions between crude oil producers, refiners, wholesalers, and retailers.

16. There are four major refiners of gasoline in the state of Washington. They are Atlantic Richfield Company (ARCO), Tosco, Texaco and Shell. There are no refiners of gasoline in the state of Oregon.

17. Over 80% of the gasoline consumed in Washington is refined in Washington. Over 70% of the gasoline consumed in Oregon is refined in Washington and transported to Oregon via various modes of transportation, including the Olympic Pipeline.

18. The Olympic Pipeline is an underground pipeline which serves as the primary mode of transporting and delivering gasoline from the Seattle, Washington area to points further south in Washington and Oregon, including but not limited to, Olympia, Washington; Portland, Oregon; and Eugene, Oregon. The gasoline is delivered to various supply terminals in Washington and Oregon and then transported to Retail Sites for sale to the general public.

19. Wholesalers purchase gasoline from Refiners. Wholesalers and Refiners enter into supply contracts which provide for the supply of gasoline to Wholesalers.

20. Retailers purchase gasoline directly from Refiners or from Wholesalers. Gasoline may be sold to the general public under a specific, well-recognized brand name, or under an off-brand or unbranded label.

21. In most instances, consumers must purchase gasoline at Retail Sites in limited quantities. Consumer purchases of gasoline are influenced by several factors including price, brand recognition, use of a credit card in the purchase, gas mileage, commute patterns, and lifestyle patterns.

22. Gasoline is a unique commodity with special characteristics that cannot be displaced by or replaced with substituted products. Gasoline is necessary and essential for powering motor vehicles and other equipment essential to the conduct of everyday life.

23. Entry into the refining market for gasoline in response to a small but significant and nontransitory increase in gasoline price is difficult because substantial barriers to entry exist. It costs hundreds of millions of dollars to build a new refinery. Environmental regulations must be followed and environmental permits are obtained only after significant environmental review. Refiners must have ready access to crude oil, both by acquiring rights to it and by having physical access to it.

24. Entry into the wholesale market for gasoline in response to a small but significant and nontransitory increase in gasoline prices is also difficult because substantial barriers to entry exist. To achieve maximum efficiencies, a new entrant into the wholesale gasoline market needs a firm commitment for supply and a network of Retail Sites in order to re-sell the gasoline to Retailers and/or the general public. A new entrant into the wholesale gasoline market also needs adequate storage space and/or adequate access to gasoline terminals to access and deliver gasoline to Retail Sites. The availability of a wholesale supply of gasoline also depends on

refiners, who often compete directly with Wholesalers. Without access to refined gasoline product and the necessary physical facilities, it would cost millions of dollars and take more than two years for a new wholesale entrant to establish a wholesale customer base and distribution system.

25. Entry into the retail gasoline market in response to a small but significant and nontransitory increase in gasoline prices is difficult because substantial barriers to entry exist. New entry into the retail gasoline market costs millions of dollars, requires a firm commitment for supply, and requires a network of Retail Sites in order to re-sell the gasoline to the general public.

26. The refining and sale of gasoline at the wholesale and retail levels constitute lines of commerce and relevant product markets as those terms are defined in 15 U.S.C. §§ 1 and 2.

27. The relevant geographic markets for refining gasoline are the state of Washington and state of Oregon. Shell and Texaco are major competitors in the refining of gasoline. Together, Shell and Texaco would refine a significant portion of the gasoline produced in the state of Washington, and that refined gasoline product represents a substantial portion of the gasoline distributed for resale to consumers in Washington and Oregon.

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28. The relevant geographic markets for the wholesale distribution and retail sale of gasoline in Washington and Oregon are local. If a small, but significant and nontransitory increase in the price of gasoline occurred in local markets, a significant number of Wholesalers would have no choice but to pay the nontransitory price increase because they have no reasonable alternative source of gasoline to purchase in order to avoid the nontransitory price increase. These price increases would, in turn, be passed through to consumers in the form of higher retail gasoline prices.

29. Other relevant local geographic markets potentially exist, based on factors such as commuter traffic flow, location of Retail Sites in or near primarily residential neighborhoods, and sales patterns.

30. Defendants' businesses involve a substantial and continuous flow of commodities and payments in interstate commerce, including but not limited to the following:

a. The primary purchasers and end-users of defendants' gasoline are consumers and business people residing in Washington and Oregon;

b. Purchasers of defendants' gasoline include consumers who travel into but reside outside of the states of Washington and Oregon; and

c. Shell and Texaco each year make significant purchases and sales of equipment and products which flow in and affect interstate commerce.

VIII. FIRST CAUSE OF ACTION

31. Plaintiffs reallege paragraphs 1-30 above.

32. The effect of the Joint Venture between Shell and Texaco may be to substantially lessen competition in the refining and sale of gasoline in the relevant product and geographic markets described above, in the following ways, among others:

a. Actual competition between Shell and Texaco will be eliminated; and

b. Competition generally in the sales of gasoline at the wholesale and retail levels may be substantially lessened.

33. As a result of the Joint Venture, the States of Washington and Oregon and their citizens will suffer irreparable injury.

34. Such conduct constitutes a violation of Section 7 of the Clayton Act, 15 U.S.C. §18.

IX. SECOND CAUSE OF ACTION

35. Plaintiffs reallege paragraphs 1-34 above.

36. Such conduct constitutes a violation of RCW §19.86.060.

37. Such conduct constitutes a violation of ORS 646.730.

X. THIRD CAUSE OF ACTION

38. Plaintiffs reallege paragraphs 1-30 above.

39. Such conduct constitutes a contract, combination or conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

XI. FOURTH CAUSE OF ACTION

40. Plaintiffs reallege paragraphs 1-30 above.

41. Such conduct consitutes a contract, combination or conspiracy in restraint of trade in violation of RCW 19.86.030.

42. Such conduct constitutes a contract, combination or conspiracy in restraint of trade in violation of ORS 646.725.

XII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

A. That the Joint Venture between Shell and Texaco be adjudged in violation of Section 7 of the Clayton Act, Section 1 and 2 of the Sherman Act, RCW 19.86 and ORS 646.725 and 646.730;

B. That an injunction be issued against the defendant ordering divestiture and other relief as necessary to prevent irreparable harm to the States of Washington and Oregon and their consumers;

C. That civil penalties be imposed in an amount to be determined by the court pursuant to RCW 19.86.140 and ORS 646.760;

D. That plaintiffs be awarded the costs of suit, including reasonable attorneys' fees; and

E. That plaintiffs have such other and further relief as the court deems just and proper.

DATED this _____ day of ____________________, 1997.

CHRISTINE O. GREGOIRE

Attorney General of Washington

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DATED this _____ day of ____________________, 1997.

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